

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

PARTS MANUFACTURING CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2124

Decision No. CU - 198

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by PARTS MANUFACTURING CORP., in the amount of \$6,898.87 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between 1937 and the presentation of this claim on April 21, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant further certified that there were two stockholders on the date of loss and continuously to the date of the presentation of this claim and submitted evidence to establish that both of the shareholders have been nationals of the United States since their respective births in the United States.

The record contains copies of claimant's invoices which reflect the sales of merchandise to a number of consignees in Cuba. Additionally, the record includes letters from the consignees and advices from the Marine Midland Trust Company of New York, to the claimant, informing it that the drafts drawn on these consignees had all been paid in local currency to local Cuban banks. However, claimant states that it has not received these funds. Details of the various payments are reflected below:

<u>Consignee</u>	<u>Bank</u>	<u>Date Paid</u>	<u>Amount</u>
Salvador Valdes Velez, Cienfuegos, Cuba	Trust Co. of Cuba	March 9, 1962 (Agent's Commission	\$1,355.17 67.25)
Trans America, S. A., Havana, Cuba	Trust Co. of Cuba	October 27, 1961 (Agent's Commission	345.19 17.26)
Infanta Automobile Service, Havana, Cuba	Trust Co. of Cuba	August 9, 1960 (Agent's Commission	633.19 29.13)
Guerra y Pinera, Havana, Cuba	Banco Pujol	June 8, 1960 (Agent's Commission	899.99 62.50)
Jose Saladrigas, Havana, Cuba	Banco Pujol	March 2, 1960 (Agent's Commission	573.28 25.80)
Francisco Hernandez, Havana, Cuba	Bank of Nova Scotia	October 11, 1960 (Agent's Commission	365.97 18.30)
Ferretera Lisamar, S. A., Marianao, Cuba	Banco Agricola Industrial	January 10, 1960 (Agent's Commission	848.84 39.01)
Pascual Garcia, Havana, Cuba	Banco Gonzalez	April 30, 1960 (Agent's Commission	743.94 34.65)
Gomera Nacional Balado, S. A., Havana, Cuba	Banco Pujol	March 2, 1960 (Agent's Commission	1,133.30 76.33)
Total			\$6,898.87
			(Total Agent's Commission \$ 370.23)

The total of the payments made to Cuban banks on behalf of claimant is \$6,898.87, the amount asserted by claimant as representing its total loss in Cuba. However, the record reflects and the claimant confirms that a percentage of the sum collected by the Cuban banks represented unpaid but owing commissions to claimant's Cuban representative. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban Government is the amount collected by the Cuban banks from the various consignees, less the amount claimant owed in commissions to its Cuban representatives.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof,

with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on the following dates:

<u>Date</u>	<u>Amount</u>
January 11, 1960	\$ 809.83
March 3, 1960	1,604.45
May 1, 1960	709.29
June 9, 1960	837.49
August 10, 1960	604.06
October 12, 1960	347.67
October 28, 1961	327.93
March 10, 1962	1,287.92
Total	<u>\$6,528.64</u>

The above dates are the days following the date of payment of the drafts to the Cuban collecting bank.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that PARTS MANUFACTURING CORP., suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Thousand Five Hundred Twenty-Eight Dollars and Sixty-Four Cents (\$6,528.64) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAY 22 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)